

REMARKS

I. Introduction

In response to the pending Office Action, Applicants have amended claims 1, 17 and 19 to further clarify the subject matter of the present disclosure and to overcome the § 101 and 112 rejections. No new matter has been added.

Applicants appreciate the granting of an interview with the Examiner on January 8, 2009. During the interview, Applicants discussed the § 101 and 112 rejections and possible amendments to the claims.

For the reasons set forth below, Applicants respectfully submit that all pending claims are patentable over the cited prior art.

II. The Rejection Of Claims 1-3 And 19-21 Under 35 U.S.C. § 101

Claims 1-3 and 19-21 have been rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicants respectfully submit that the § 101 rejection is without merit.

With regard to claim 1, it is alleged that the steps performed in the body of the claim are performed entirely by a human operator and a such, does not constitute patentable subject matter. As claims 2 and 3 and 21 are dependent upon claim 1, these claims are allegedly non-patentable as well. In response, Applicants submit that this above allegation is incorrect and that nowhere in the specification or claims is there an indication that the steps are performed by a human. However, to overcome the rejection over § 101, Applicants have amended claim 1 to indicate that the steps are performed by a computer. Accordingly, Applicant respectfully submit that claims 1-3 and 21 are directed to patentable subject matter.

With regard to claim 19, it is alleged that this claim does not define the discrete physical structures required of the portfolio generating system recited in the preamble of the claim. As such, it is alleged that it is unclear to what statutory class claim 19 is directed. As claim 20 is dependent upon claim 19, this claim is allegedly non-patentable as well. In response, Applicants have added limitations directed toward the computer system which comprises the physical structure of the system. Support for these limitations may be found, for example, on page 19, line 19 to page 20, line 8 of the specification. Accordingly, the claims are directed to a portfolio generating system and portfolio.

In view of the above, Applicants respectfully request that the § 101 rejections of claims 1-3 and 19-21 be withdrawn.

III. The Rejection Of Claims 1-3, 17 And 19-21 Under 35 U.S.C. § 112

Claims 1-3, 17 and 19-21 were rejected under 35 U.S.C. § 112, first paragraph, for failing to comply with the written description requirement. Applicants respectfully traverse this rejection for at least the following reasons.

It is alleged that the limitations “creating a portfolio of future positions which includes selecting a portfolio of price risk instruments which represent distribution factors describing the physics of the flow of electricity in the network and the available market of price instruments;” and “producing a combination of price risk instruments for the market in which at least one amount of each of the price risk instruments are proportioned to cause the eventual locational prices to be interlocked such that an effect of the congestion prices for the congestible lines on the locational prices of the electricity is reduced” are not supported in the specification. Applicant respectfully disagree.

The step of “creating a portfolio of future positions which include selecting a portfolio of price risk instruments which represent distribution factors describing the physics of the flow of electricity in the network and the available market of price instruments” may be found in Fig. 3 of the drawings, in which step 302 recites “generate portfolio of Price Risk Instruments”. In addition, page 13, line 24 – page 14, line 21 discusses finding positions in the spot electricity market.

The step of “producing a combination of price risk instruments for the market in which at least one amount of each of the price risk instruments are proportioned to cause the eventual locational prices to be interlocked such that an effect of the congestion prices for the congestible lines on the locational prices of the electricity is reduced” is disclosed, for example, on page 6, lines 10-22, in which the use of the equation $z'A - y'P'A = 0$ is utilized to produce said combination of price risk instruments.

In view of the above, Applicants respectfully request that the § 112, first paragraph rejections of claims 1-3, 17 and 19-21 be withdrawn.

Claims 1-3, 17 and 19-21 were also rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. In response, Applicants have followed the Examiner’s suggestions set forth on pages 6-7 of the Office Action in order to overcome these rejections.

IV. Conclusion

Having fully responded to all matters raised in the Office Action, Applicants submit that all claims are in condition for allowance, an indication of which is respectfully solicited.

Application No.: 09/522,709

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP



Nathaniel D. McQueen
Registration No. 53,308

600 13th Street, N.W.
Washington, DC 20005-3096
Phone: 202.756.8000 NDM/MEF:kap
Facsimile: 202.756.8087
Date: January 14, 2009

**Please recognize our Customer No. 20277
as our correspondence address.**